

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MATTHEW ALAN STUEVE,

Defendant.

**8:20CR173**

**ORDER**

This matter is before the Court on defendant Matthew Alan Stueve's ("Stueve") Motion to Dismiss (Filing No. 35). Stueve seeks to dismiss Count II of the Indictment, arguing "[t]he undisputed evidence in this case is insufficient as a matter of law to support a verdict on the charge."

After having been fully briefed on the matter, the magistrate judge<sup>1</sup> issued a Findings and Recommendation (Filing No. 43) pursuant to 28 U.S.C. § 636(b)(1), recommending that Stueve's motion be denied. The magistrate judge concluded Stueve's motion to dismiss Count II of the Indictment is a premature attack on the sufficiency of evidence and such an argument is better left for a motion for acquittal. *See United States v. Sholley-Gonzalez*, 996 F.3d 887, 893 (8th Cir. 2021) ("[C]hallenges to the evidence's 'sufficiency [are] tested by a motion for acquittal pursuant to Federal Rule of Criminal Procedure 29,' not by a 'dismissal of an indictment on the basis of predictions as to what the trial evidence will be.'" (quoting *United States v. Ferro*, 252 F.3d 964, 968 (8th Cir. 2001))).

The magistrate judge advised the parties (1) they had fourteen days to object to his findings and recommendation and (2) failing "to timely object may constitute a waiver of

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<sup>1</sup>The Honorable Michael D. Nelson, United States Magistrate Judge for the District of Nebraska.

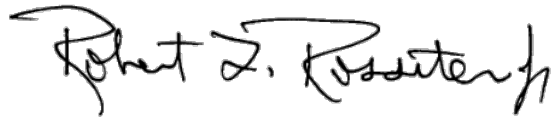
any such objection.” Neither party has objected within the time permitted, and further review is not necessary. *See Leonard v. Dorsey & Whitney LLP*, 553 F.3d 609, 619-20 (8th Cir. 2009) (“[T]he failure to file objections eliminates not only the need for de novo review, but *any* review by the district court.”); *see also* Fed. R. Crim. P. 59(a) and (b)(2); NECrimR 59.2(a) and (e). Accordingly,

IT IS ORDERED:

1. The Findings and Recommendation (Filing No. 43) are accepted in their entirety. Any objections are deemed waived.
2. Defendant Matthew Alan Stueve’s Motion to Dismiss (Filing No. 25) is denied.

Dated this 30th day of June 2021.

BY THE COURT:

A handwritten signature in black ink, reading "Robert F. Rossiter, Jr." with a stylized flourish at the end.

Robert F. Rossiter, Jr.  
United States District Judge